

Supreme Court, U.S.
FILED

APR 19 1979

MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-572

UNITED STATES PAROLE COMMISSION, ET AL.,
Petitioners

—v.—

JOHN M. GERAGHTY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 5, 1978
CERTIORARI GRANTED MARCH 5, 1979

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SUMMARY OF RELEVANT DOCKET ENTRIES

<u>DATE</u>	<u>ITEM</u>
	United States District Court for the District of Columbia, Civil Action No. 76-1729
9/15/76	File: Complaint for declaratory and injunctive relief; plaintiff's motion for interlocutory relief; plaintiff's motion to set expedited hearing; plaintiff's motion to certify class
10/4/76	File defendants' opposition 1) to motion for interlocutory relief; 2) to motion to certify class
10/6/76	File defendants' motion to transfer and for enlargement of time
10/15/76	File plaintiff's memorandum in reply to opposition to motion to certify; file plaintiff's reply to opposition to motion for interlocutory relief with exhibits
10/20/76	File plaintiff's response in opposition to motion to transfer
11/1/76	File defendants' reply to plaintiff's response in opposition to transfer
11/12/76	Enter order: Case transferred to United States District Court for the Middle District of Pennsylvania. Memorandum opinion filed.
	United States District Court for the Middle District of Pennsylvania, Civil No. 76-1467
12/3/76	File plaintiff's amendment to complaint
12/7/76	Enter order directing respondents to show cause why relief requested should not be granted
12/13/76	File return and answer of respondents to the amended petition for writ of habeas corpus; file brief of respondents in opposition to petition for writ of habeas corpus

- 12/27/76 File plaintiff's allegations of additional material facts
- 12/29/76 File plaintiff's motion for summary judgment
File brief of John M. Geraghty in support of (a) Motion to Certify Class, (b) Motion for Summary Judgment, and in Reply to Brief in Opposition to Petition for Writ of Habeas Corpus
- 1/10/77 File opposition of respondents to petitioner's motion for summary judgment
- 1/17/77 File reply memorandum of petitioner in support of motion for summary judgment
- 2/24/77 Enter order: Motion for class certification is denied. It is further ordered that the petition for writ of habeas corpus is denied, and the action is dismissed. Memorandum opinion filed
- 4/15/77 File notice of appeal of John M. Geraghty
- 4/28/77 File petition of Eliezer Becher to intervene as a party plaintiff after judgment; memorandum in support thereof, and proposed amendment to complaint to include Becher as a party plaintiff and add new allegations
- 5/5/77 File respondents' opposition to petition to intervene after judgment
- 5/11/77 Enter order: Petition to intervene is dismissed for lack of jurisdiction. Memorandum opinion filed
- 6/9/77 File notice of appeal of Eliezer Becher; motion for leave to appeal in forma pauperis.
- 6/16/77 Enter order granting motion of Eliezer Becher for leave to appeal in forma pauperis

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action 76-1729

JOHN M. GERAGHTY, P.O. Box 1000,
Montgomery, Pennsylvania, individually
and on behalf of a class, PLAINTIFFS

—vs.—

UNITED STATES PAROLE COMMISSION and
ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANTS

COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff JOHN M. GERAGHTY, individually and on behalf of a class, by counsel, alleges the following:

1. This is a civil action arising under the Fifth Amendment of the Constitution of the United States, the Administrative Procedure Act (5 U.S.C. §§ 7-0-706), and the federal common law; the jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241, and Section 10 of the Administrative Procedure Act. As set out below with greater specificity, the rights involved for each member of the plaintiff class exceed ten thousand dollars, exclusive of interest and costs, in worth.

2. Defendant United States Parole Commission is the federal agency to which the duty to promulgate regulations governing parole release decisions has been delegated. (18 U.S.C. § 4203(a)1 (1976))

3. Defendant Attorney General of the United States is the federal official having custody over all federal prisoners. (18 U.S.C. § 4082)

4. Plaintiff John M. Geraghty is a federal prisoner, presently confined at the Federal Prison Camp at Allenwood, Pennsylvania, by virtue of a sentence imposed in the United States District Court for the Northern District of Illinois, *sub nom. United States v. Braasch, et al.*, No. 72 Cr. 979, (N.D. Ill. 1973), affirmed 505

F.2d 139 (7th Cir. 1974), cert. denied 421 U.S. 910 (1975). Geraghty had initially been sentenced to a 48 month term of imprisonment under the terms of 18 U.S.C. § 4208(a)2 (1970), upon his conviction of conspiracy to commit extortion, 18 U.S.C. § 1951, and false declarations to a grand jury, 18 U.S.C. § 1923. On October 9, 1975, the district court reduced this sentence to a term of 30 months, also under the terms of 18 U.S.C. § 4208(a)2 (1970). The government is presently seeking to vacate this sentence reduction in a case awaiting decision in the United States Court of Appeals for the Seventh Circuit, *United States v. Braasch*, No. 76-1148, appeal argued June 11, 1976. Under his modified sentence, absent parole, Geraghty will be discharged on June 30, 1977; if the sentence reduction is undone, absent parole, Geraghty expects to be discharged on May 29, 1978.

5. Plaintiff brings this as a class action, under the provisions of Federal Rule of Civil Procedure 23(b)2:

a. The class consists of all federal prisoners who have been or will become eligible for release on parole. There are approximately 25,000 federal prisoners, and the class is so numerous that joinder of all members is impracticable.

b. Among the questions common to the class are:

1. Whether Public Law 94-233 is facially unconstitutional?

2. Assuming that the statute is constitutional, may the powers vested in the United States Parole Commission to make deferred sentencing decisions be retroactively applied to persons, like plaintiff, sentenced prior to the effective date of the new act?

3. Whether the "guidelines for decision-making," 28 C.F.R. § 2.20, are arbitrary, unlawful, and create classifications contrary to the due process clause of the Fifth Amendment?

4. Whether the present policies of the United States Parole Commission effect the repeal of the ameliorative provisions intended in 18 U.S.C. § 4208(a)2 (1970)?

c. The claims of plaintiff Geraghty are typical of the claims of the class, as set out below with greater specificity.

d. Plaintiff Geraghty will fairly and adequately represent the interests of the class: Geraghty's interests are identical to the interests of the class, and he is represented by counsel skilled and experienced in this type of litigation.

e. Defendant United States Parole Commission has acted on grounds generally applicable to the class, and declaratory and injunctive relief is appropriate to the class as a whole.

f. A class action is superior to any other type of action: The issues raised in this action are capable of repetition among members of the class, but if an individual action is brought, the issue will likely evade review, if the individual plaintiff is released prior to a final disposition of the lawsuit.

Denial of Parole

6. Geraghty was considered for parole in December of 1975; on December 12, 1975, his case was designated as "original jurisdiction," per 28 C.F.R. § 2.17(3), and referred to the National Directors of the United States Board of Parole for disposition.

7. On January 13, 1976, Geraghty was notified that he had been denied parole for the following reasons

Your offense behavior has been rated as very high severity. You have a salient factor score of 11. You have been in custody for a total of 4 months. Guidelines established by the Board for adult cases which consider the above factors indicate a range of 26-36 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, it is found that a decision at this consideration outside the guidelines does not appear warranted. Board policy prohibits a continuance past one-third of your sentence at initial hearing. Therefore, your case had been

scheduled for further consideration at one-third of your sentence.

8. Information relevant to Geraghty's "good institutional program performance and adjustment" had been presented to the National Directors in a "progress report," prepared by Geraghty's caseworker, which attested to his good performance and adjustment.

9. Within 30 days of receiving notice of the denial of parole by the National Directors, Geraghty appealed to the entire Board of Parole, in accordance with 28 C.F.R. § 2.27. The Board voted to affirm the initial decision in April of 1976.

10. In June of 1976, Geraghty was reconsidered for parole; prior to this hearing, a "progress report" was prepared by his social worker, and made available for the parole release decision; this report attested to Geraghty's good institutional adjustment and program performance.

11. On June 17, 1976, Geraghty's case was designated as "original jurisdiction," and referred to the National Commissioners of the United States Parole Commission for disposition.

12. On July 7, 1976, the National Commissioners denied parole to Geraghty, supplying the following rationale

Your offense behavior has been rated as very high severity because it involved extortion. You have a salient factor score of 11. You have been in custody for a total of 9 months. Guidelines established by the Commission for adult cases which consider the above cases indicate a range of 26-36 months to be served before release for cases with good institutional program performance and adjustment. After review of all relevant factors and information presented, a decision outside the guidelines at this consideration is not found warranted.

13. The order accompanying the denial of parole directed that Geraghty continue in confinement until the expiration of his sentence.

14. On August 6, 1976, Geraghty filed an appeal to the United States Parole Commission from the order

denying him parole. Pursuant to 28 C.F.R. § 2.27(a), this appeal will be heard at the next quarterly meeting of the Parole Commission, which is in October of 1976.

15. It is likely that this appeal will be futile: On July 31, 1976, Geraghty requested immediate reconsideration of the order denying him parole; this request was denied, on the grounds that the Parole Commission "has determined that no favorable action can be taken at this time."

16. Absent parole, Geraghty expects to be released on June 30, 1977, or nine months after the commencement of this action.

The Statute

17. Parole was first applied to the federal correctional system in 1910 by the Act of June 25, 1910, ch. 387, § 1, 36 Stat. 819, which provided, in pertinent part, as follows:

That if it shall appear to said board of parole from a report by the proper officers of such prison or upon application by a prisoner for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the laws, and if in the opinion of the board such release is not incompatible with the welfare of society, then said board of parole may in its discretion authorize the release of such applicant on parole, and he shall be allowed to go on parole outside of said prison . . .

18. Prior to March 15, 1976, the statute governing the discretion of the Board of Parole, which was in effect at the time Geraghty was sentenced, was compiled in 18 U.S.C. § 4203(a), and provided, in pertinent part, as follows:

If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such re-

lease is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole.

19. On March 15, 1976, Public Law 94-233, the "Parole Commission and Reorganization Act," was enacted into law. This was the first significant change in parole procedures and release criteria since the creation of parole for federal prisoners in 1910, in the Act of June 25, 1910, ch. 387, § 1, 36 Stat. 819.

20. Public Law 94-233 effects major changes in parole eligibility: First, parole under the new act is only available when a sentence of greater than one year is imposed. Compare 18 U.S.C. § 4205(a) (1976) with prior law, 18 U.S.C. § 4203 (1970). Second, a prisoner, regardless of sentence, must be considered for parole after 10 years (§ 4205(a) (1976)), rather than the 15 years of 18 U.S.C. § 4203 (1970). Third, institutional behavior, a condition of parole eligibility under prior law (18 U.S.C. § 4203(a) (1970)) is no longer a condition of eligibility, but is now a condition for parole release (§ 4206(a) (1976)).

21. Public Law 94-233 expands the scope of the factual inquiry at the parole hearing; under prior law (18 U.S.C. § 4203 (1970)), the Board of Parole considered facts presented "from a report by the proper institutional officers." § 4206(a) (1976) directs the Parole Commission to consider "the nature and circumstances of the offense and the history and characteristics of the prisoner..."

22. Public Law 94-233 changes the parole release criteria, by including institutional behavior as a factor in the parole release decision, and by broadening the scope of the factual inquiry of the parole release hearing. In addition, the new statute requires the Commission to act "pursuant to guidelines." In pertinent part, § 4206(a) (1976) provides:

(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances

of the offense and the history and characteristics of the prisoner, determines:

(1) that release would not depreciate the seriousness of his offense or promote disrespect for law, and

(2) that release would not jeopardize the public welfare;

subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to § 4203(a) (1), such prisoner shall be released.

23. Insofar as Public Law 94-233 vests the United States Parole Commission with the power to make deferred sentencing decisions, the act is unconstitutional, as the procedural safeguards required at a deferred sentencing hearing to satisfy the requirements of due process of law are expressly excluded in the new act.

24. Insofar as the Act constitutionally vests the United States Parole Commission with the power to make deferred sentencing decisions, application of this power to a prisoner, like plaintiff Geraghty, sentenced prior to the effective date of the new act would be of *ex post facto* effect, and thereby unconstitutional.

The Regulations

25. In 1973, the United States Board of Parole adopted "guidelines for decisionmaking," 38 Fed. Reg. 31942 (November 19, 1973). These regulations define a fairly tight framework to circumscribe the Board's statutorily broad power, and to grant parole. The current "guidelines" were published at 41 Fed. Reg. 37316, 37222 (September 3, 1976).

26. The "guidelines" consist of two scales which determine the range of "customary total time before release" to be served before parole will be granted:

a. The first scale, known as the "offense severity scale," contains six classifications of offense severity, ranging from "low" through "moderate" to "greatest." For each classification of offense severity, the "offense

severity scale" lists four ranges of the "customary total time served before release."

b. The second scale, known as the "salient factor scale," determines which of the four ranges of "customary total time" will be applied to a given prisoner. Plaintiff Geraghty has a "salient factor score" of 11—the highest possible score—and was classified under the lowest range of "customary total time served before release."

27. Separate tables of "customary total time to be served before release" have been prepared for "adult" cases, "youth" correction act cases, and "NARA" (Narcotics Addict Rehabilitation Act) cases. Under the guidelines, an "adult" sentenced under 18 U.S.C. § 4208 (a) (1970), as plaintiff Geraghty, will be considered as having the same "customary total time before release" as a person receiving a regular adult sentence, under 18 U.S.C. § 4202 (1970).

28. The "offense severity scale" applied to plaintiff Geraghty at his second parole hearing was published at 41 Fed. Reg. 19330 (May 12, 1976) and had been repromulgated without significant changes at 41 Fed. Reg. 37222 (Sept. 3, 1976).

29. Offense severity for the "guidelines" is predetermined from the name of the offense, and is independent of the actual sentence which may have been imposed, and of the nature and circumstances of the offense and the history and circumstances of the prisoner. Plaintiff Geraghty was classified as a person who had committed an offense of "very high severity because it involved extortion."

Thus, extortion would be a "very high severity" offense regardless of whether the maximum permissible sentence was three years, as in 18 U.S.C. § 872, or twenty years, as in 18 U.S.C. § 1951. And the "minimum customary total time served" would be the same 26-36 months, regardless of whether it exceeded the actual sentence imposed, or was shorter than the parole eligibility date.

Creation of the Guidelines

30. The creation of the "guidelines for decision making" is described in three reports sponsored by the United States Board of Parole: Hoffman, *Paroling Policy Feedback*, June, 1973 (NCCD Parole Decision Making Project Supp. Rep. No. 8); Hoffman & Gottfredson, *Paroling Policy Guidelines: A Matter of Equity*, June 1973 (NCCD Parole Decision Making Project Supp. Rep. No. 9); Hoffman & Beck, *Application of a Severity Scale*, June 1973 (NCCD Parole Decision Making Project Supp. Rep. No. 13).

31. The "guidelines" are loosely based upon the policies applied at one time in release decisions in Youth Corrections Act cases, 18 U.S.C. §§ 5005-5026: From November 1, 1971 to March 30, 1972 (Hoffman at 7), a study was conducted for the Board of Parole to determine what criteria it was using in release decisions in YCA cases. (Hoffman at 2)

32. The purpose of this study was to make explicit the considerations and relative weightings used in YCA release decisions, to enable the "parole board members to examine the congruence of actual with desired policy on a macroscopic level." (Hoffman at 26)

33. The study indicated that only two factors were controlling release decisions in YCA cases—a judgment of the severity of the prisoner's offense behavior, and a subjective estimation of the likelihood of a favorable parole outcome. (Hoffman at 12)

34. After the Board of Parole was informed that it was considering only two factors in YCA release decisions, it decided that future release decisions for all prisoners eligible for parole should be controlled by these two factors. (Hoffman & Gottfredson at 9)

35. This decision was predicated on the view that parole is a "deferred sentencing decision" (Hoffman & Gottfredson at 3), regardless of whether parole eligibility was mandated by statute, as in a regular adult sentence (18 U.S.C. § 4202), or whether parole eligibility was within the discretion of the Board, as in YCA cases, or in sentences imposed under 18 U.S.C. § 4208(a)2.

36. The two factors that the Board chose to determine prospective parole release policies had been subjectively rated in the YCA study: "A disadvantage of subjective measures is that they may reflect rationalizations for decisions rather than determinants of them. For example, if a parole board member is examining a case and develops a subjective desire to parole, he may tend to credit the subject with better institutional progress or a higher chance of success than is, in fact, indicated." Hoffman at 11. Similarly, if there is a "subjective desire to parole," offense severity may be rated lower "than is, in fact, indicated."

37. To eliminate this subjectivity, the *ad hoc* estimation of the likelihood of a favorable parole outcome was replaced by an 11 point "salient factor scale." (Hoffman & Gottfredson at 9) In addition, the *ad hoc* judgment of the severity of an individual's behavior was replaced by rating the severity of the type of offense for which the sentence had been imposed.

38. To obtain this rating of offense severity, members of the Board of Parole sorted 51 index cards "into six piles labeled 'low severity,' low/moderate severity,' 'moderate severity,' 'high severity,' 'very high severity,' and 'greatest severity' offenses, producing a six point severity scale." (Hoffman & Beck at 26-27)

39. Each index card contained one label of offense behavior, e.g., "armed robbery," "embezzlement less than \$20,000," "possession of 'heavy narcotics' by addict less than \$500," "statutory sex offenses." (Hoffman & Beck at 3, 7-14)

40. The guideline severity ratings were created after each member of the Board of Parole had been given a rating sheet of offense severity as well as the pooled ratings of the group: "The members then discussed and voted as to the appropriate severity level for each of the offense descriptions to be used (for the next six month period) in the decision guidelines." (Hoffman & Beck at 28) The result of this vote is essentially the severity scale of the present guidelines. (Hoffman & Beck at 28)

41. The "guidelines for decision making" represented a new "prospective policy" (Hoffman & Beck at 27) for

parole release decisions, bearing no rational relation to the subjective parole release decisions formerly extant in YCA cases or in regular adult cases.

42. The "customary length of imprisonment" for the guidelines was obtained by computing the median length of time served in prior years for each "severity/prognosis" level, and by then adding an arbitrary "discretion range" to obtain the spread of the present guidelines. (Hoffman & Gottfredson at 10)

43. The median is different from the mean: The mean is the arithmetic average, while the "median may be defined as that score value which partitions the set into two subjects, with an equal number of scores in each, so that the number of scores above the median value is equal to the number of scores below the median. (Lordahl, *Modern Statistics for Behavioral Sciences* (1967) at 37)

44. The difference between the mean and the median is illustrated by an example: The median length of imprisonment for a "high severity offense" and an "excellent" prognosis level was computed as 31 months. Assuming that the sample size for this severity/prognosis level was nine samples, the same median of 31 months would be computed if the actual lengths of imprisonment had been (in months)

6, 7, 8, 9,	31,	32, 33, 34, 35
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or

27, 28, 29, 30,	31,	32, 33, 34, 35.
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The median of 31 months "partitions the set into two subsets," with four scores in each.

45. Although the median is the same for both arrays of the example, the mean is about 22 months for the first group, and 31 months for the second group.

46. In computing the "customary length of imprisonment" of the "guidelines," no attempt was made to determine if the type of distribution of the first array ("bimodal") was present in the pre-guidelines "customary length of imprisonment."

47. The "guidelines" created new parole release policies (Hoffman & Beck, *supra* at 27), not rationally related to the parole release policies extant prior to adoption of the guidelines.

Application of the Guidelines

48. The overwhelming number of parole release decisions for persons receiving regular adult sentences and persons sentenced under the provisions of 18 U.S.C. § 4208(a)2 (1970) falls within the "discretion range" of the "guidelines." During the first half of 1975, 83.8% of Parole Board discretionary decisions fell within the guidelines, with only 8.7% having been more lenient.

CLAIMED DEFECTS IN THE "GUIDELINES"

49. The classification of offense severity set out in the guidelines is unlawful, in that it fails to conform to the mandate of 18 U.S.C. § 4206(a), that parole release decisions be based "upon consideration of the nature and circumstances of the offense."

50. The "customary length of imprisonment" defined by the guidelines is arbitrary, in that it disregards the actual sentence imposed, and is not rationally related to the "customary length of imprisonment" extant prior to adoption of the guidelines.

51. The Parole Commission has failed to promulgate guidelines which distinguish parole release decisions for persons, like plaintiff Geraghty, sentenced under the provisions of 18 U.S.C. § 4208(a)2, (1970), where parole release is determined by rehabilitation. The effect of this omission is that persons sentenced under this statute are considered under the same parole release criteria as persons who received regular adult sentences, i.e., that the provisions of 18 U.S.C. § 4208(a)2 (1970) have been repealed by administrative action.

52. The guidelines classify all prisoners eligible for parole into two groups—one which will receive serious consideration for release on parole, and another which will not receive such consideration; this classification is based solely on the length of sentence imposed by the

district court judge, is independent of the nature and circumstances of the offense, and therefore deprives a prisoner, like Geraghty, who received "too short" a sentence of his right to serious consideration for release on parole.

IRREPARABLE HARM

53. Plaintiff Geraghty has been denied parole solely through application of the "guidelines." While he is confined in prison, his family of wife and eight children, seven of whom live at home, are on welfare; Geraghty's spouse is becoming mentally and physically incapable of contending with all of the pressure, the financial burdens, and the problems of managing a large household singlehandedly that result from his continued incarceration. The injury resulting from the denial of parole has a monetary value in excess of ten thousand dollars.

54. From the time of Geraghty's indictment in December of 1972 until September of 1975, he was enlarged on nominal bail, appeared in court whenever required to do so, and there has never been any suggestion that continued enlargement posed a danger of any kind to society. Geraghty's progress report, prepared on May 26, 1976, indicates that he has maintained a "clear conduct record," and that his "detail supervisor is very pleased with his performance and abilities and wishes that he had several more workers of his caliber under his supervision." In addition, this report states that Geraghty is believed to be "not generally regarded to be criminally oriented and appears more to be a situational type of offender. He has resources available to him in the community, both family and promise of employment."

WHEREFORE plaintiffs requests that the Court

1. Certify that this action may be maintained as a class action on behalf of all federal prisoners who are, or will be, eligible for release on parole;
2. Fashion such interlocutory relief as may be appropriate to enlarge Geraghty from custody pending final disposition of this case,

3. Declare that Public Law 94-233 is unconstitutional, insofar as it vests the United States Parole Commission with the power to make deferred sentencing judgements for any prisoner, or, alternatively, for persons sentenced prior to the effective date of the new act,

4. Declare that the "guidelines for decisionmaking," 28 C.F.R. § 2.20, are unlawful, arbitrary, and unconstitutional, and enter such injunctive relief as may be required to prohibit the United States Parole Commission from denying, or continuing to deny, parole to any prisoner eligible for parole, by application of those regulations,

5. Whatsoever other relief as may be required.

/s/ Kenneth N. Flaxman
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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF COLUMBIA

C.A. 76-1729

JOHN M. GERAGHTY, individually and
 on behalf of a class, PLAINTIFFS

—vs.—

UNITED STATES PAROLE COMMISSION, ET AL., DEFENDANTS
 MOTION TO CERTIFY CLASS

Pursuant to Federal Rule of Civil Procedure 23(c)(1), plaintiffs move the Court to certify that this action may be maintained as a class action. As alleged in the complaint (¶ 5), all of the pre-requisites for a class action under Rule 23(b)2 are met in this case, and certification as a class action is necessary to insure that the issues in this case, which are capable of repetition, will not evade review, as in *Preiser v. Newkirk*, 422 U.S. 395 (1975), and *Bradford v. Weinstein*, 423 U.S. 127 (1975). See, e.g., *Gerstein v. Pugh*, 420 U.S. 103, 110 n. 11 (1975).

For these reasons, the Court should certify that this case may be maintained as a class action on behalf of all federal prisoners who are or who will become eligible for release on parole.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. 76-1729

JOHN M. GERAGHTY, individually and
on behalf of a class, PLAINTIFFS

—vs.—

UNITED STATES PAROLE COMMISSION, ET AL., DEFENDANTS

PLAINTIFFS' MOTION TO SET
EXPEDITED HEARING

Plaintiffs move the Court to set the pending motion of plaintiff Geraghty for interlocutory relief for a prompt hearing. As grounds for this motion, plaintiffs, by counsel, state as follows:

1. If Geraghty prevails in this case, he will be entitled at the very least to a re-hearing of the decision of the United States Parole Commission denying him parole.

2. Geraghty is due to be discharged absent parole in June of 1977, and if this case is to have any meaning for Geraghty, relief must be fashioned swiftly.

3. Defendants will not be prejudiced by an expedited disposition of this case, as the issues in this case are identical to those raised in *Cale v. Attorney General*, both in this Court, Civil Action No. 75-1822, and in the Court of Appeals, No. 76-1171.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. 76-1729

JOHN M. GERAGHTY, individually and
on behalf of a class, PLAINTIFFS

—vs.—

UNITED STATES PAROLE COMMISSION, ET AL., DEFENDANTS

MOTION OF PLAINTIFF GERAGHTY FOR
INTERLOCUTORARY RELIEF

Pursuant to Federal Rule of Civil Procedure 65 and 28 U.S.C. § 1651, plaintiff John M. Geraghty requests that the Court fashion interlocutory relief in the form of an order directing the issuance of a writ of habeas corpus, enlarging Geraghty from confinement upon such conditions as may be appropriate pending final disposition of this case. This motion is based on evidentiary material and memoranda filed in the related case of *Cale v. Attorney General*, Civil Action 75-1822.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 76-1467

JOHN M. GERAGHTY, individually and
on behalf of a class, PLAINTIFFS

—vs.—

UNITED STATES PAROLE COMMISSION, and
ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANTS

AMENDMENT TO COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(d), the complaint is hereby amended by the addition of the Superintendent, Federal Prison Camp, Allenwood, Pennsylvania, as a defendant in this cause, and by the addition of the following allegations:

I. Paragraph 4 of the complaint heretofore filed is replaced by the following:

4. Plaintiff JOHN M. GERAGHTY is a federal prisoner confined at the Federal Prison Camp, at Allenwood, Pennsylvania. Geraghty's custody is the result of a sentence imposed by the United States District Court for the Northern District of Illinois, *sub. nom. United States v. Braasch*, No. 72 Cr 979, aff'd 505 F.2d 139 (7th Cir. 1974), cert. denied 421 U.S. 910 (1975). Geraghty was initially sentenced to a 48 month term of imprisonment under the terms of 18 U.S.C. § 4208(a)(2) (1970); on October 9, 1975, the district court in the Northern District of Illinois reduced Geraghty's sentence to a term of 30 months, also under the provisions of 18 U.S.C. § 4208(a)(2) (1970). The government's attempt to upset this sentence reduction was rejected by the Court of Appeals on October 4, 1976, *sub. nom. United States v. Braasch*, ____ F.2d ____ (No. 76-1148, 76-1309, 7th Cir., October 4, 1976) (appeal

dismissed; mandamus denied) On November 15, 1976, Geraghty filed a motion to correct sentence, pursuant to 28 U.S.C. § 2255, in the Northern District of Illinois, *Geraghty v. United States*, No. 76 C 4215. Under the terms of his present sentence, Geraghty will be discharged from custody on June 30, 1977. In addition, absent relief in this action or in the action pending in the Northern District of Illinois, Geraghty expects to be transferred to a half-way house on Chicago, Illinois on or about December 15, 1976.

II. The following is added to the complaint:

COUNT II

55. Plaintiff realleges the allegations of paragraphs 6-14 of the complaint.

56. On October 19, 1976 the National Appeals Board of the United States Parole Commission affirmed the previous decision denying parole to plaintiff, and continuing him to expiration; the following rationale was supplied by the National Appeals Board:

- a) No other information submitted for requested review was deemed significant enough to affect the decision.
- b) Reasons given support the decision.

57. Defendant Superintendent, Federal Prison Camp, Allenwood, Pennsylvania, is the federal official having immediate custody over plaintiff, and is named in his official capacity, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

STATEMENT OF CLAIM

58. Plaintiff has been denied parole on criteria inappropriate for a person, like plaintiff, sentenced under the provisions of 18 U.S.C. § 4208(a)(2) (1970), where parole is intended to be granted only on the basis of the prisoner's institutional performance and the Board's expectation that the prisoner will be able to live within

the law upon release. The criteria applied to plaintiff are those applied in all "adult cases," irrespective of the fact that sentence was imposed under 18 U.S.C. § 4208(a) (2) (1970).

59. Plaintiff has been denied parole on irrational criteria, and realleges the allegations of paragraphs 25-48 of the complaint heretofore filed.

60. Plaintiff has been denied parole on criteria inconsistent with the present parole statute, which requires the parole decision to be made after an inquiry into "the nature and circumstances of the offense and the history and characteristics of the prisoner." 18 U.S.C. § 4206(a) (1976). Contrary to this standard, plaintiff has been denied parole because he was convicted of an offense which the parole commission believed "involved extortion."

61. The decision to deny parole to plaintiff is arbitrary and capricious, in that

a. he was not seriously considered for parole only on the basis of his institutional performance and the Board's expectation of his ability to live within the law upon release, as required by 18 U.S.C. § 4208(a)(2) (1970), and

b. plaintiff was not convicted of an offense which "involved extortion." At plaintiff's trial, the jury was instructed to return a verdict of guilty absent "proof of any specific acts on the part of the public officials demonstrating force, threats, or the use of fear." (Trial transcript at 7536-37) All that was required was proof that money had been obtained from retail liquor dealers by police officers exploiting their official position. (*Ibid*) This offense, while punishable by 18 U.S.C. § 1951, is something other than "extortion."

WHEREFORE plaintiff requests that the Court direct issuance of a writ of habeas corpus, directing the Superintendent, Federal Prison Camp, Allenwood, Pennsyl-

vania, to forthwith release Geraghty, upon such conditions as the Court may deem appropriate.

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 76-1467

JOHN M. GERAGHTY, PETITIONER

v.

UNITED STATES PAROLE COMMISSION, ET AL., RESPONDENTS

RETURN AND ANSWER

COME NOW the respondents, by and through their attorneys, and make the following return and answer to the amended petition for writ of habeas corpus.

A.

The respondents answer the numbered paragraphs of the petition as follows:

1. The allegations of this paragraph set out the jurisdictional bases for this case, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

2-4. Admitted.

5. The allegations of this section state conclusions of law regarding class certification, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

6-14. Admitted.

15. Respondents admit that petitioner's administrative appeal has been decided and that the decision was to affirm the earlier parole denial.

16-18. Admitted.

19-24. The allegations in these paragraphs state conclusions of law, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

25-28. Admitted.

29. Denied.

30-32. Admitted.

33-35. Denied.

36. Admitted insofar as it is alleged that offense severity and likelihood of success on parole were rated subjectively in the initial YCA study. Denied insofar as it is alleged that those are the only two factors which the Board chose to determine prospective parole policies. Answering further, respondents would show that the factor of institutional conduct was also chosen as one of the factors for parole decisions under the guidelines.

37. With respect to the first sentence of this paragraph, respondents admit that the salient factor score was adopted to eliminate the totally subjective estimation of parole prognosis. Answering further, however, respondents would show that the salient factor score may be overridden where it is contradicted by the Parole Commission's clinical evaluation of parole prognosis. The allegations in the second sentence of this paragraph are denied. Answering further respondents would show that the examples of offenses on the severity scale of the guidelines are objective standards by which the *ad hoc* judgment of an individual's offense severity is measured.

38-40. Admitted.

41. The allegations of this paragraph state a conclusion of law, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

42. Denied.

43-45. Admitted.

46. Denied.

47. The allegations of this paragraph state a conclusion of law, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

48. Admitted.

49-52. The allegations in these paragraphs state conclusions of law, to which no answers are required; but to the extent that answers may be required, those allegations are denied.

53. Denied.

54-57. Admitted.

58. The allegations in the second sentence of this paragraph are admitted. The allegations in the first sentence state a conclusion of law, to which no answer is required; but to the extent that an answer may be required, those allegations are denied.

59-61. The allegations in these paragraphs state conclusions of law, to which no answers are required; but to the extent that answers may be required, those allegations are denied.

All allegations in the petition not hereinbefore expressly admitted or denied are hereby denied.

B.

In the two rule making proceedings in which the Board of Parole and Parole Commission invited public comments on proposed regulations, including the guidelines, neither petitioner nor his attorney submitted any comment. Therefore, to the extent that petitioner challenges the validity of the parole guidelines, the petition should be dismissed for failure to exhaust administrative remedies.

C.

Certification of this case as a class action would be inappropriate for the reasons stated in the attached brief.

D.

For the reasons stated in the attached brief, the petition fails to state a claim upon which relief may be granted.

WHEREFORE, respondents pray that the petitioner's request for class certification and the petition for writ

of habeas corpus be denied and that the case be dismissed.

Respectfully submitted,

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United States Attorney

/s/ Joseph F. Cimini
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Assistant United States Attorney

/s/ Patrick J. Glynn
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 76-1467

JOHN M. GERAGHTY, individually and
on behalf of a class, PLAINTIFF-PETITIONER

-vs-

UNITED STATES PAROLE COMMISSION, ET AL.,
DEFENDANTS-RESPONDENTS

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, by counsel, moves the Court to grant summary judgment in his behalf against defendant United States Parole Commission, and declare that the "guidelines for decisionmaking," 28 C.F.R. § 2.20, are unlawful and direct the Parole Commission to promulgate regulations which are consistent with the Parole Commission and Reorganization Act of 1976, Public Law 94-233 (March 15, 1976). This motion is based on the pleadings, affidavits, and evidentiary material on file, including the three reports identified in paragraph 30 of the complaint, copies of which are appended hereto. Grounds to support this motion are set out in a brief filed with this motion.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Civil No. 76-1467

[Filed April 15, 1977]

JOHN M. GERAGHTY, individually and
on behalf of a class, PLAINTIFF-PETITIONER

-vs.-

UNITED STATES PAROLE COMMISSION, ET AL.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that John M. Geraghty, individually and on behalf of a class, hereby appeals to the United States Court of Appeals for the Third Circuit from that part of the final decision of this court entered in the above captioned cause on the 24th day of February, 1977 relating to the motion for class certification, and to the denial of relief on Count I of the complaint.

/s/ Kenneth N. Flaxman
One of the attorneys for plaintiffs

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 77-1679

JOHN M. GERAGHTY, PETITIONER-APPELLANT

v.

UNITED STATES PAROLE COMMISSION, ET AL.,
RESPONDENTS-APPELLEES

No. 77-1858

JOHN M. GERAGHTY, PETITIONER

v.

UNITED STATES PAROLE COMMISSION, ET AL.,
RESPONDENTS-APPELLEES

ELIEZER BECHER, INTERVENOR-APPELLANT

MOTION TO DISMISS APPEALS

COME NOW the appellees, by their attorneys, and move that these consolidated appeals be dismissed. The factual and legal bases for this motion are set out below.

FACTS

Petitioner, John M. Geraghty, was convicted in the United States District Court for the Northern District of Illinois for the offenses of conspiracy to commit extortion, 18 U.S.C. § 1951, and false declarations to a grand jury, 18 U.S.C. § 1623. On appeal, petitioner's conviction was affirmed. *United States v. Braasch*, 505 F.2d 139 (7th Cir. 1974). The United States Supreme Court denied certiorari, 421 U.S. 910 (1975). After initially being sentenced to a term of 48 months, petitioner's sentence was reduced to 30 months under Rule 35 of the Federal Rules of Criminal Procedure. *United*

States v. Braasch, No. 72 CR 979 (N.D. Ill., Oct. 9, 1975), *aff'd*, 542 F.2d 442 (7th Cir. 1976). Petitioner's motion for further relief pursuant to 28 U.S.C. § 2225 was denied on December 21, 1976. *Geraghty v. United States*, No. 76 C 4215 (N.D. Ill.).

Petitioner Geraghty was denied parole on July 7, 1976, pursuant to the published parole guidelines, 28 C.F.R. § 2.20. On September 15, 1976, petitioner Geraghty filed this action in the United States District Court for the District of Columbia, challenging the Parole Commission and Reorganization Act, 18 U.S.C. § 4201 et. seq. (1976), the parole guidelines promulgated by the Commission, *supra*, and the Parole Commission's decision denying petitioner's release on parole. The Honorable Joseph C. Waddy, District Judge, construed the action as a petition for a writ of habeas corpus, and ordered it transferred to the Middle District of Pennsylvania. There, on February 24, 1977, the Honorable R. Dixon Herman, District Judge, denied the petition for a writ of habeas corpus, and also denied petitioner Geraghty's motion to certify the case as a class action. *Geraghty v. Parole Commission*, 429 F. Supp. 737 (M.D. Pa. 1977). On April 15, 1977, Geraghty filed a timely notice of appeal. Geraghty's appeal is docketed as No. 77-1679 in this Court.

After Geraghty's notice of appeal had been filed, and after the sixty-day period for filing the notice had expired, appellant Becher filed a petition to intervene after judgment pursuant to Rule 24(a) and (b), Fed.R.Civ. Pro. On April 28, 1977, Becher sought to intervene "only to insure that the Court of Appeals is presented with a live controversy with respect to the legality of the 'guidelines for decisionmaking,' 28 C.F.R. § 2.20." *Reply Memorandum in Support of Petition to Intervene After Judgment* at 1. On May 11, 1977, Judge Herman dismissed for lack of jurisdiction appellant's petition to intervene, on the grounds that the filing on April 15 of the notice of appeal had divested the district court of further jurisdiction in this case. Appellant Becher filed

a notice of appeal on June 9, 1977. Becher's appeal is docketed as No. 77-1858 in this Court.

On June 30, 1977, petitioner Geraghty was mandatorily released from prison, having completed the service of his sentence less good time. 18 U.S.C. § 4163.

* * * *

SUPREME COURT OF THE UNITED STATES

No. 78-572

UNITED STATES PAROLE COMMISSION, ET AL., PETITIONERS

v.

JOHN M. GERAGHTY

ORDER ALLOWING CERTIORARI. Filed March 5, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is set for oral argument in tandem with No. 78-904, *Deposit Guaranty National Bank v. Robert L. Roper, et al.*